



September 3, 1999

Mr. John Schneider
First Assistant City Attorney
City of Pasadena
P.O. Box 672
Pasadena, Texas 77501

OR99-2474

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 127051.

The City of Pasadena received a request for information pertaining to a shooting death. You seek to withhold the requested information under sections 552.103 of the Government Code.¹ You have submitted representative samples of the information at issue.²

We note initially that, although it is not included in the sample information submitted, the information responsive to the request appears to include an autopsy report specifically made public by section 11, article 49.25 of the Code of Criminal Procedure. Section 11 provides as follows:

The medical examiner shall keep full and complete records properly indexed, giving the name if known of every person whose

¹Although you also cited to sections 552.101 and 552.108 of the Government Code, you did not explain why these exceptions would apply to the information. Therefore, we do not address these provisions.

²In reaching our conclusion, we assume that the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision No. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

death is investigated, the place where the body was found, the date, the cause and manner of death, and shall issue a death certificate. The full report and detailed findings of the autopsy, if any, shall promptly be delivered to the proper district, county, or criminal district attorney in any case where further investigation is advisable. Such records shall be public records.

Code Crim. Proc. art. 49.25, § 11. Pursuant to section 11, the autopsy report is a public record and must be released to the requestor.

Section 552.103(a) excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991). The mere chance of litigation will not trigger section 552.103(a). Open Records Decision No. 452 (1986) and authorities cited therein. To demonstrate that litigation is reasonably anticipated, the governmental body must furnish *concrete* evidence that litigation involving a specific matter is realistically contemplated and is more than mere conjecture. *Id.*

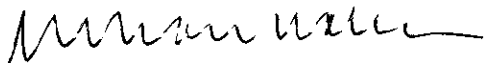
You provide a demand letter from the requestor which seeks damages in connection with the shooting death to which the requested information pertains. We conclude that you have established that the city reasonably anticipates litigation to which the requested information relates. Accordingly, except for the autopsy report discussed above, which must be released, you may withhold the requested information under section 552.103(a).

We assume, however, that none of the information in the records at issue has previously been made available to the opposing party in the litigation. Absent special circumstances, once information has been obtained by all parties to the litigation, either through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349, 320 (1982). To the extent the opposing party has seen or had access to these records, there would be no justification for now withholding such information from the requestor pursuant to section 552.103(a). Similarly, section 552.103(a) does not

authorize withholding materials which have already been made available to the public. Open Records Decision No. 436 (1986). The applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982), Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Open Records Division

WMW/ch

Ref: ID# 127051

Encl. Submitted documents

cc: Mr. Trang Tran
Attorney at Law
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440 Louisiana, Suite 1212
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(w/o enclosures)